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BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
JOSEPH P. MENTOR dba MENTOR  
CONSTRUCTION COMPANY,

Appellant,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 78-195

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal from the issuance of a \$250 civil penalty for the alleged violation of Section 9.15(a) of respondent's Regulation I, came before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, Chris Smith, and David Akana (presiding) at a formal hearing in Seattle on January 8, 1979.

Appellant Mentor Construction Company was represented by its attorney, Robert P. Love; respondent was represented by its attorney, Keith D. McGoffin.

Having heard the testimony, having examined the exhibits, and

DA/LB

1 having considered the contentions of the parties, the Board makes  
2 these

### 3 FINDINGS OF FACT

#### 4 I

5 Pursuant to RCW 43.21B.060 Respondent has filed with this Board a  
6 certified copy of its Regulation I and attachments thereto which we notice

7 Section 9.11(a) states it unlawful for any person to cause or  
8 permit particulate matter to be handled, transported or stored without  
9 taking reasonable precautions to prevent the particulate matter from  
10 becoming airborne.

11 Section 9.29 provides for a civil penalty of up to \$250 per  
12 day for each violation of Regulation I.

#### 13 II

14 On July 12, 1978, while in the vicinity of the Mentor Construction  
15 Company's (hereinafter "MCC") work site at 5610 Kitsap Way in Kitsap  
16 County, Respondent the Inspector observed a considerable amount of  
17 particulate matter, here dust, coming from a sandblasting operation  
18 on the work site. Upon investigation, the Inspector learned that the  
19 Air Recycling and Sandblasting Company (hereinafter "ARSC") was  
20 sandblasting certain walls of a structure without using water, shrouding,  
21 or other method to control the resultant particulate matter. Joe Hanley  
22 from ARSC was notified of the alleged violation. He later informed  
23 Respondent that the operation would be stopped.

24 For the foregoing event, a notice of violation for violating  
25 Section 9.11(a) of Regulation I was issued to MCC and to ARSC from  
26 the file as a \$150 civil penalty. MCC appealed the civil penalty.

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1 KPSC did not appeal.

2 III

3 At all relevant times herein, MCC was the general contractor  
4 for the project at the work site and KPSC was an independent contractor  
5 performing work at the site.

6 IV

7 Any Conclusion of Law which should be deemed a Finding of Fact  
8 is hereby adopted as such.

9 From these Findings, the Board comes to these

10 CONCLUSIONS OF LAW

11 I

12 Appellant MCC was not shown to be responsible for the actions or  
omissions of KPSC, which actions violated Section 9.15(a). Thus, appellant  
14 MCC did not cause or permit the violation as alleged. Accordingly, the  
15 \$250 civil penalty should be stricken as to MCC.

16 II

17 Any Finding of Fact which should be deemed a Conclusion of Law  
18 is hereby adopted as such.

19 From these Conclusions the Board enters this

20 ORDER

21 The \$250 civil penalty as to Joseph P. Mentor dba Mentor  
22 Construction Company is stricken.

23  
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25  
26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
AND ORDER

1 DATED this 16<sup>th</sup> day of January, 1979

2 POLLUTION CONTROL PLANNING BOARD

3 *Dave J. Mooney*  
4 DAVE J. MOONEY, Chairman

5 *Chris Smith*  
6 CHRIS SMITH, Member

7 *David Afana*  
8 DAVID AFANA, Member